

United States District Court
For the Northern District of California

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6 ELIAS ROSAS and ANTONIO
7 VILLAGOMEZ,

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10 No. C 08-05259 WHA

11 Plaintiffs,

12 v.
13 ETS SERVICES, LLC, GMAC
14 MORTGAGE, and DOES 1-50, inclusive

15 Defendants.

16 /

17 ORDER RE MOTION TO
18 DISMISS

19 On October 23, 2008, plaintiffs initiated this action by filing a complaint in the Superior
20 Court of California, County of Alameda. On November 20, 2008, defendants removed the
21 complaint to this Court.

22 On January 16, 2009, defendants filed a motion to dismiss plaintiffs' complaint. The
23 motion to dismiss was noticed for a February 26 hearing. Plaintiffs did not file an opposition to
24 the motion on the February 5 due date. The Court staff left a message with plaintiffs' counsel
25 requesting they immediately file an opposition brief or a statement of non-opposition. The
26 Court also issued a notice providing plaintiffs with another opportunity to respond by setting a
27 new deadline of February 17 for plaintiffs to file an opposition, and the Court warned that
28 "[p]laintiffs' failure to respond will very likely mean dismissal of their case for a failure to
prosecute" (Dkt. 24). To date, plaintiffs still have not filed an opposition or a statement of
non-opposition. Apparently, this failure to respond to the motion is consistent with plaintiffs'

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1 counsel's conduct in similar cases. In fact, other district courts have granted motions to dismiss
2 similar complaints filed by plaintiffs' counsel, and some courts have expressed concern that
3 plaintiffs' counsel is improperly using the judicial process to delay foreclosures. The Court has
4 also learned that plaintiffs' counsel is a vexatious litigant and their law offices have been shut
5 down recently.

In the motion to dismiss, defendants argue that plaintiffs' complaint is premised on the flawed legal theory that a loan servicer and/or trustee on a deed of trust must have physical possession of the original mortgage note to commence nonjudicial foreclosure proceedings. Having reviewed the moving papers and the record, defendants' motion to dismiss appears to be well taken and should be granted. The Court will dismiss this case unless **WITHIN TWENTY-ONE** calendar days plaintiffs appear *pro se* or have a new lawyer file a notice of appearance and show cause why the case should not be dismissed. The hearing and case management conference scheduled for February 26, 2009 is **VACATED**.

14 The existing attorneys must serve copies of this order on the named plaintiffs **WITHIN**
15 **THREE DAYS** of the date of this order. Service by first class mail will be sufficient.

17 || IT IS SO ORDERED.

19 || Dated: February 19, 2009

Wm. R. Howe